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NASA Procedural Requirements

COMPLIANCE IS MANDATORY**NPR 1900.3B**

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Request Notification of Change

 (NASA Only)**Subject: Ethics Program Management****Responsible Office: Office of the General Counsel**[| TOC](#) | [Preface](#) | [Chapter1](#) | [Chapter2](#) | [Chapter3](#) | [Chapter4](#) | [Chapter5](#) | [Chapter6](#) | [Chapter7](#) |
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CHAPTER 3: Advice and Counseling

3.1 Written Opinions

Any written interpretation of a criminal ethics statute must be based on a written statement of facts provided to the attorney by the individual requesting the opinion. While this practice is not required for the written interpretation of non-criminal provisions, it should be followed to the maximum extent practicable in those cases. All written opinions interpreting the statutes at Chapter 11 of Title 18 shall be prospective in nature, and no written opinion may be issued which includes a determination of whether such statutes have been violated by an employee's prior conduct. For standards governing referral of prior conduct to the Office of Inspector General, see NPD 9800.1A, NASA Office of Inspector General Programs. Supplemental information resulting from interviews with witnesses other than the individual requesting the opinion need not be provided in writing. Any relevant facts gathered from such witnesses, however, should be documented by the ethics official preparing the opinion.

3.2 Post-employment Opinions and Seeking Employment

3.2.1 SES Employees

For SES employees, Headquarters concurrence is required on post-employment opinions. Opinions for SES employees who have been out of the Government for more than 1 year are subject to information copy only.

3.2.2 Non-SES Employees

For non-SES employees, an information copy of post-employment opinions shall be sent to Headquarters.

3.2.3 Nature and Timing of Headquarters Communication

Headquarters shall be provided an advance copy 1 week prior to execution, where practicable. In the case of post-employment opinions only, concurrence may be verbal where required in the interest of time.

3.2.4 Format

Requests for post-employment opinions shall be in writing. All opinions involving a discrete set of facts must be in writing.

3.2.5 Exemption for scientific and technological communications

a. Whenever a former Government employee, who is subject to the constraints of post-employment conflict of interest statute 18 U.S.C. § 207, wishes to communicate with NASA under the exemption in section 207(j)(5) to make a communication solely for the purpose of furnishing scientific or technological information, the former employee shall provide the following information to the NASA employee contacted:

1) That he or she is a former Government employee subject to the post employment restrictions of 18 U.S.C. § 207

(a), (c), or (d)--specify which;

(2) The name and description of the NASA projects or programs worked on and the level of involvement in each; and

(3) That the communication is solely for the purpose of furnishing scientific or technological information.

b. If the former government employee has questions as to whether the communication comes within the scientific and technological exemption, he or she should contact the DAEO or the legal office at the NASA Center where that person was previously employed.

3.2.6 Seeking Employment

In the event that an employee is seeking employment outside of NASA and must recuse him or herself from involvement in matters affecting the interests of an outside entity, the recusal process shall be coordinated, at a minimum, with the employee's supervisor and the appropriate Headquarters or Center legal counsel. All recusals shall be in writing.

3.3 Outside Activity Requests

Approval of outside activity requests for Center Directors, Deputy Center Directors, and Chief Counsels is a Headquarters action. For other "Key Officials," as defined in the Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration, 5 CFR § 6901, an information copy of their approved requests shall be sent to Headquarters. Other outside employment requests will be subject to general guidance.

3.4 Statutory Waivers

3.4.1 Prohibition

Employees are prohibited by criminal statute, 18 U.S.C. § 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to their knowledge, they, or any person whose interests are imputed to them under the statute, have a financial interest, if the particular matter will have a direct and predictable effect on that interest.

3.4.2 Specific Waiver Available

A NASA employee may request a waiver of this prohibition. NASA may grant a specific waiver of the prohibition only if the Agency determines that the employee's financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services. The waiver must be obtained before the employee participates in the matter.

3.4.3 Procedures for Specific Waiver

a. Format

The employee's request for a waiver must be in writing. The request must provide sufficient information for the reviewing official to address the factors set forth in 5 CFR § 2640.301, including a full description of the particular matter involved, the relevant duties of the employee, and the exact nature and amount of the disqualifying financial interest.

b. Process

(1) Statutory waivers (e.g., Section 208 waivers) are Headquarters actions. All waivers require the approval of the Administrator.

(2) Headquarters employees must submit their requests to the Official-in-Charge of the Headquarters office in which they are employed and to the General Counsel for concurrence. The Official-in-Charge will then submit the request to the Administrator with recommendations on the proposed waiver.

(3) Center employees must submit their requests to their Center Chief Counsel for concurrence and then to the Director of the Center where they are employed. The Center Director will provide the request, with recommendations, to the appropriate Enterprise Assistant Administrator and to the General Counsel for review and submission to the Administrator. Headquarters may authorize a Center ethics official to consult directly with OGE on any specific waiver request, or to deem such consultation impracticable, as set forth in 5 CFR § 2640.303.

c. Copies

Copies of approved waivers must be forwarded to the Assistant Administrator for Human Resources, the General Counsel, and OGE.

3.4.4 Cross-References

For regulations governing waivers and exemptions under 18 U.S.C. § 208, see 5 CFR part 2640.

3.5 Impartiality Determinations

Prior coordination with Headquarters is required for Agency Designee determinations under subpart E if the determination relates to the Center Director, Deputy Center Director, or Chief Counsel. Other subpart E determinations are subject to general guidance.

3.6 Widely Attended Gathering (WAG) Determinations

3.6.1 Authority to Issue a WAG

Any event may be a Headquarters action. A Center has the authority to approve WAG determinations, subject to general guidance, where the event is in the geographic region of the Center, and the NASA invitees are predominantly employees of that Center, even if some invitees are from other Centers or Headquarters. Prior coordination with Headquarters is required if high-level officials from Headquarters have been invited and may actually attend the event.

Information copies of Center WAG determinations must be provided to Headquarters and to other Centers if personnel from those locations are being, or may be, invited to the event.

3.6.2 Timing of Determinations

Determinations may not be issued after the fact. Although multiple events may be addressed by a single document, each separate event, including each iteration of recurring events, must have a particularized analysis sufficient to support the determination.

3.7 Other Advice and Counseling

For types of advice and counseling that are not otherwise addressed, the appropriate level of Headquarters involvement is general guidance. However, in any case in which an information copy is submitted to OGE, an information copy should be sent to Headquarters also.

3.8 Sensitive Matters

Even when Headquarters involvement in a particular matter is not required, Center Chief Counsel's Offices may consult with the General Counsel's Office on any matter in which guidance is desirable or of which they believe Headquarters should be made aware. Chief Counsel's Offices should undertake to consult with Headquarters any time the sensitivity of the matter warrants it, considering the following factors:

- a. The position(s) of the individual(s) involved.
- b. The amount of money or value of assets involved.
- c. The likelihood of similar issues arising in the future, and the desirability of setting a precedent or improving consistency in handling similar matters.
- d. The potential for criminal investigation arising out of the fact pattern.
- e. The level of visibility of the issue outside the Agency.
- f. Statutory or regulatory requirements that affect the issue. In particular, when an agency other than NASA is required to be consulted or notified regarding an issue, Headquarters should also be notified prior to notice being provided to the outside agency.

3.9 Criminal Matters

Where a matter has been referred to the appropriate authorities for potential criminal investigation, Headquarters should be notified.

3.10 Form of Counseling

Ethics officials should tailor ethics advice to the needs and requirements of each situation. Factors to consider should include the following:

- a. The preferences of the employee,

- b. The importance of the substantive advice,
- c. The need to formally document background factual information,
- d. The need to formally document any advice to help protect the Agency and employee with respect to the employee's needs, the preferences of potential outside entities, and against any potential criminal investigation, and
- e. The need to report information to the Office of Government Ethics, the need to document Agency precedent and keep accurate statistics for Agency use, the need to report information to the Agency ethics team.

While these factors are not exclusive, ethics officials should consider each in reaching a determination on whether to provide written or oral advice, and shall be able to articulate good reasons for the decision made. To the extent practicable, ethics officials should keep some record of oral advice given for all but the most general and/or informal requests.

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